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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN REPLY REFER TO:
1800D4
8010-JRC
CN9301821

Honorable J. Robert Kerrey
United States Senate
316 Hart Senate Office Building
Washington, D.C. 20510-2704

Dear Senator Kerrey:

Thank you for your letter on behalf of Mr. William P. Sandman, regarding implementation of the programming access provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).

Section 19 of the 1992 Cable Act adds new Section 628 to the Communications Act of 1934, as amended, to prohibit unfair or discriminatory practices in the sale of video programming. The expressed intent of this provision is to foster the development of competition to cable systems by increasing other multichannel video programming distributors' access to programming. In our First Report and Order in MM Docket No. 92-265, adopted April 1, 1993, and released April 30, 1993, the Commission adopted implementing regulations for Section 19. In so doing, the Commission endeavored to follow the plain language of the statute, as informed by the legislative history, and to

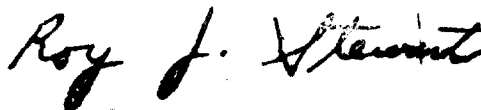
result in harm. The Commission also concludes, however, that the plain language of the statute requires complaints filed pursuant to the general prohibitions of Section 628(b) regarding unspecified unfair practices must demonstrate that an alleged violation had the purpose or effect of hindering significantly or preventing the complainant from providing programming to subscribers or consumers.

In addition, the First Report and Order adopts a streamlined complaint process. The Commission's rules will encourage programmers to provide relevant information to distributors before a complaint is filed with the Commission. In the event that a programmer declines to provide such information, it will be sufficient for a distributor to submit a sworn complaint alleging, based upon information and belief, that an impermissible price differential exists. With respect to complaints alleging price discrimination, the burden will be placed on the programmer to refute the charge by presenting evidence of the actual price differential and its justifications for that differential. The complaining distributor will then have an opportunity to reply.

With respect to exclusive contracts, the First Report and Order determines that exclusive arrangements between vertically integrated programmers and cable operators in areas not served by a cable operator are illegal and may not be justified under any circumstances. The First Report and Order also holds that exclusive contracts in areas served by cable (except those entered into prior to June 1, 1990) may not be enforced unless the Commission first determines that the contract serves the public interest. These determinations will be made on a case-by-case basis, following the five public interest factors set out in the statute.

For your reference, I have enclosed a copy of the press release, which includes a detailed summary of the Commission's action in this proceeding. Thank you for your interest in this matter.

Sincerely,



Roy J. Stewart
Chief, Mass Media Bureau

J. ROBERT KERREY
NEBRASKA

United States Senate

WASHINGTON, DC 20510-2704

MMB
CATV-92

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April 21, 1993

Linda Townsend Solheim
Director, Legislative Affairs
Federal Communication Commission
Room 808
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Solheim:

I am enclosing a letter from William Sandman, whose concern falls within your jurisdiction.

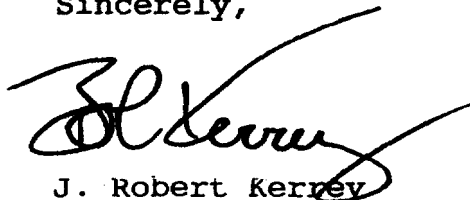
I am concerned that the proposed rule to which Mr. Sandman refers should include adequate protections against price discrimination. I would appreciate any information which will enable me to respond to my constituent's concerns. Please return the enclosed correspondence with your report to:

The Honorable Bob Kerrey
U.S. Senate
Washington, D.C. 20510

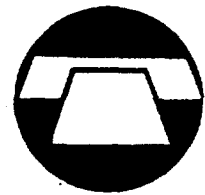
Attention: Neal McKnight

Thank you for your assistance in this matter.

Sincerely,



J. Robert Kerrey



DILLER TELEPHONE CO.

William P. Sandman, Manager

93 FEB 11 1993 10:09
February 11 1993

P.O. Box 218
Diller, Nebraska 68342
Telephone (402) 793-5330

The Honorable Robert Kerrey
Room 316
Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Kerrey:

I am writing to you to express my concern about the Federal Communications Commission's Notice of Proposed Rule Making that was released on December 24, specifically as it pertains to the Section 19 programming access provisions of the recently passed cable bill.

I am the General Manager of the Diller Telephone Company which serves approximately 900 customers in southeast Nebraska. In our part of Nebraska there are many consumers for whom cable service is unavailable due to the remoteness. The only way these consumers can receive television is by using an antenna or home satellite dish. Until now, these home satellite dish owners have been paying a higher rate for their programming than cable customers.

My company, along with hundreds of utilities like it around the country, worked long and hard to secure the inclusion of the cable bill's Section 19 programming access provisions in order to protect our consumers from the cable industry's price gouging. When the bill passed, we were understandably pleased and hopeful that the discrimination would stop.

This is why we are concerned by the tone of the FCC's NPRM on the